

SENATE BILL NO. 129

INTRODUCED BY D. LEWIS

BY REQUEST OF THE FIRE SUPPRESSION COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE VOLUNTARY PRIVATE LAND WILDFIRE MITIGATION ACT; ESTABLISHING A VOLUNTARY PRIVATE LAND WILDFIRE MITIGATION POLICY; AUTHORIZING VOLUNTARY WILDFIRE MITIGATION CONSERVATION EASEMENTS IN THE WILDLAND-URBAN INTERFACE; AUTHORIZING WILDFIRE RISK REDUCTION PLANS; PROVIDING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH RULEMAKING AUTHORITY; ESTABLISHING A TEMPORARY TAX CREDIT FOR QUALIFYING VOLUNTARY WILDFIRE MITIGATION CONSERVATION EASEMENTS; REQUIRING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO REPORT TO THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Voluntary Private Land Wildfire Mitigation Act".

NEW SECTION. Section 2. Voluntary private land wildfire mitigation policy. The legislature finds and declares that:

(1) with more and more homes being built in the state's wildland-urban interface, the number of people and the value of structures, personal property, and fixtures at risk of destruction from wildfire increases substantially, dramatically inflating the cost and risk of fighting fire and dangerously stretching the capacity of firefighters to fight wildfires;

(2) increased residential development in the wildland-urban interface is creating substantial burdens on state and local government services and resources;

(3) the contribution of voluntary wildfire mitigation conservation easements and the voluntary establishment of wildfire risk reduction plans by owners of property located in the wildland-urban interface will substantially reduce the risks, costs, and burdens on local and state services associated with fighting wildfires

1 in the wildland-urban interface;

2 (4) voluntary wildfire mitigation conservation easements that are granted pursuant to local and state
3 policies that define the wildland-urban interface and that seek to reduce wildfire risks in those areas also serve
4 important state and local land and resource conservation policies and wildfire control policies;

5 (5) wildfire mitigation conservation easements can help assist in the character, direction, and timing of
6 community development; and

7 (6) the state of Montana should encourage voluntary actions through the use of targeted incentives for
8 owners of real property located within the wildland-urban interface that control wildfire risk and that help reduce
9 the burdens and costs associated with fighting wildfires.

10
11 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], unless the context requires
12 otherwise, the following definitions apply:

13 (1) "Agricultural structure" means any building or structure that is used exclusively for or in conjunction
14 with farming, ranching, livestock, or crop production and is not used for other commercial purposes, human
15 habitation, or recreational purposes.

16 (2) "Conservation easement" has the meaning provided for in 76-6-104.

17 (3) "Covenant" means a real property covenant created in accordance with Title 70, chapter 17, part 2.

18 (4) "Department" means the department of natural resources and conservation provided for in Title 2,
19 chapter 15, part 33.

20 (5) "Development area" means a designated area within a property protected by a voluntary wildfire
21 mitigation conservation easement not to exceed 1 acre in size in which nonagricultural, commercial, and
22 residential structures are permitted.

23 (6) "Qualified voluntary wildfire mitigation conservation easement holder" means a public body as defined
24 in 76-6-104 or a qualified private organization as defined in 76-6-104 that holds a voluntary wildfire conservation
25 easement .

26 (7) "Recreational structure" means a building or structure that is dedicated, in whole or in part, to
27 commercial or noncommercial sport, exercise, training, and other leisure activities.

28 (8) "Related person" means a person with relationships as described in section 267(b) of the Internal
29 Revenue Code, 26 U.S.C. 267(b).

30 (9) "Residential structure" means a building or structure equipped with sleeping quarters that

1 accommodates overnight use, including residences, guest houses, bunkhouses, agricultural employee housing,
2 and similar structures designed or used for overnight human habitation.

3 (10) "Servitude" means an easement or real property servitude that runs with the land in accordance with
4 Title 70, chapter 17, part 1.

5 (11) "Voluntary wildfire mitigation conservation easement" means a voluntary grant of a conservation
6 easement on and over a private property owner's property pursuant to the provisions of Title 76, chapter 6, to
7 preserve and protect open-space lands for the purpose of reducing the risks, costs, and burdens on local and
8 state firefighting services.

9 (12) "Wildfire" has the meaning provided for in 76-13-102.

10 (13) "Wildland-urban interface" has the meaning provided for in 76-13-102.

11
12 **NEW SECTION. Section 4. Voluntary wildfire mitigation conservation easements.** Subject to the
13 provisions of [sections 1 through 5], an owner of private property in the state may grant a voluntary wildfire
14 mitigation conservation easement only if:

15 (1) the property subject to the voluntary wildfire mitigation conservation easement is located in a
16 designated wildland-urban interface as defined by:

17 (a) a county community wildfire protection plan under Public Law 108-148, the Healthy Forests
18 Restoration Act of 2003;

19 (b) zoning regulations enacted pursuant to Title 76, chapter 2, part 2;

20 (c) a county growth plan pursuant to 76-1-601(3)(j)(i); or

21 (d) the department through an administrative rulemaking process that:

22 (i) identifies wildland-urban interface parcels in each county;

23 (ii) delineates each wildland-urban interface parcel on maps; and

24 (iii) ensures that the maps and information on the maps is available to the public, local governing bodies,
25 and governmental fire agencies organized under Title 7, chapter 33;

26 (2) the voluntary wildfire mitigation conservation easement complies with the provisions of Title 76,
27 chapter 6;

28 (3) the voluntary wildfire mitigation conservation easement is held by a qualified voluntary wildfire
29 mitigation conservation easement holder;

30 (4) the terms of the voluntary wildfire mitigation conservation easement require:

1 (a) the confinement of all structures that are not agricultural structures permitted on the owner's property,
2 including commercial structures, residences, and associated residential structures such as garages, workshops,
3 offices, recreational structures, and all other freestanding buildings, to development areas;

4 (b) that the location of any development areas on the owner's property must be approved in writing by
5 the qualified voluntary wildfire mitigation conservation easement holder and that approval may only be granted
6 after:

7 (i) a written certification is provided by the property owner that a professional forester and the department
8 both agree that the location of the proposed development area is consistent with fire protection priorities within
9 that wildland-urban interface; and

10 (ii) the qualified voluntary wildfire mitigation conservation easement holder agrees that proposed
11 development areas are consistent with protection of any other conservation purposes identified in the voluntary
12 wildfire mitigation conservation easement;

13 (c) a maximum density of one development area for every 160 acres placed under conservation
14 easement and an enforceable restriction that additional nonagricultural structures may not be permitted on
15 fractional or remainder tracts that are also protected by the voluntary wildfire mitigation conservation easement
16 or on adjacent properties owned by the owner or a related person if the density of residential development on
17 those adjacent properties exceeds one residential structure for every 160 acres;

18 (d) an enforceable restriction on the division or subdivision of all property placed under the voluntary
19 wildfire mitigation conservation easement into tracts of 160 acres or greater; and

20 (e) that the property owner conduct sound forest management activities in accordance with 76-13-115(7),
21 including recommended best management practices for timber land management to reduce fire risk, including
22 but not limited to:

23 (i) commercial and noncommercial timber harvests;

24 (ii) thinning;

25 (iii) prescribed burns; and

26 (iv) insect and disease treatments;

27 (5) the property owner enters into a wildfire risk reduction plan with the department pursuant to [section
28 5]; and

29 (6) the qualified voluntary wildfire mitigation conservation easement holder agrees to:

30 (a) annually monitor the property owner's compliance with the terms of the voluntary wildfire mitigation

1 conservation easement, including but not limited to those voluntary wildfire mitigation conservation easement
2 terms required pursuant to subsection (4); and

3 (b) file an annual voluntary wildfire mitigation conservation easement monitoring report with the
4 department.

5
6 **NEW SECTION. Section 5. Wildfire risk reduction plan -- department rulemaking.** (1) A private
7 property owner in the state that grants a voluntary wildfire mitigation conservation easement shall enter into an
8 agreement with the department to establish a wildfire risk reduction plan to reduce the risk of wildfire through land
9 and property management activities.

10 (2) The terms of a wildfire risk reduction plan must include:

11 (a) property owner participation in a statewide forestry stewardship program or property owner
12 participation with a professional forester to create a forest stewardship plan for the owner's property or other
13 appropriate training and resource management programs for the property owner that are approved by the
14 department in accordance with rules adopted pursuant to subsection (5).

15 (b) measures to ensure property owner compliance with best practices for development in the
16 wildland-urban interface as provided in rules adopted pursuant to 76-13-104(8)(a); and

17 (c) compliance with construction techniques and materials for any new or replacement residential
18 structures identified in rules adopted pursuant to 50-60-901.

19 (3) (a) The binding elements of a wildfire risk reduction plan must be established in a contract, covenant,
20 or servitude that runs with the land for the term of the voluntary wildfire mitigation conservation easement created
21 under [section 4]. The contract, covenant, or servitude must be recorded in the real property records of the
22 county or counties in which the property subject to the wildfire risk reduction plan is located.

23 (b) The department shall conduct a review of the wildfire risk reduction plan once every 5 years.

24 (c) After a review is conducted pursuant to subsection (3)(b), the wildfire risk reduction plan must be
25 updated and the property owner shall rerecord in the real property records of the applicable county or counties
26 any elements of the wildfire risk reduction plan that reflect any new standards for construction, structure
27 protection, or forest and wildfire risk management that have been adopted since the original plan was established
28 pursuant to subsection (3)(a).

29 (4) (a) The department:

30 (i) shall enforce the terms of a wildfire risk reduction plan to which a local fire district, a county, or the

department are parties through injunction or proceedings in equity; and

(ii) may enter the property, after notice to the owner of the property that is subject to the wildfire risk reduction plan, to ensure compliance with the plan.

(b) A qualified voluntary wildfire mitigation conservation easement holder may not enforce a wildfire risk reduction plan.

(5) The department shall adopt rules by October 1, 2009, that govern the creation, content, form, and requirements that must be included in a wildfire risk reduction plan subject to the provisions of this section.

NEW SECTION. Section 6. Credit for voluntary wildfire mitigation conservation easements. (1)

An owner of real property within the state who grants a voluntary wildfire mitigation conservation easement pursuant to [sections 1 through 5] is allowed a credit against the taxes imposed by 15-30-103 in an amount equal to the value of a voluntary wildfire mitigation conservation easement placed on property not to exceed the lesser of \$100,000 or the taxpayer's income tax liability.

(2) In order to be eligible for a credit under this section, the department of natural resources and conservation shall certify to the department that the voluntary wildfire mitigation conservation easement complies with the requirements of [section 4] and that the property owner has entered into a binding wildfire risk reduction plan pursuant to the provisions of [section 5].

(3) (a) For the purposes of this section, the value of a voluntary wildfire mitigation conservation easement must be determined by the appraisal methodology established for qualified conservation contributions in accordance with current uniform standards of professional appraisal practice established for certified real estate appraisers under 37-54-403.

(b) An appraisal of a voluntary wildfire mitigation conservation easement must be conducted by an appraiser who is certified by the Montana board of real estate appraisers. A copy of the appraisal document must be provided to the department with the taxpayer's return in the tax year on which the credit is claimed.

(4) (a) A taxpayer may claim only one tax credit for each tax year under subsection (1), either directly or by a pass-through entity in which the taxpayer is a member or shareholder.

(b) If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by subsections (1) and (2) for the tax year exceed the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 15 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must

1 be used first.

2 (5) A taxpayer may not claim a new credit for the creation of a new voluntary wildfire mitigation
3 conservation easement if the taxpayer has a carryover from an unused credit associated with a voluntary wildfire
4 mitigation conservation easement granted in a prior year.

5 (6) The credit allowed in this section may not be allocated between spouses unless the property is used
6 by a small business corporation or a partnership in which they are shareholders or partners.

7 (7) A credit held by an individual, either directly or as a result of a donation by a pass-through entity,
8 survives the death of the individual and may be claimed by the decedent's estate.

9 (8) If the credit allowed under this section is claimed by a small business corporation, as defined in
10 15-30-1101, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion
11 to report the corporation's or partnership's income or loss for Montana income tax purposes.

12
13 **NEW SECTION. Section 7. Reports to the legislature.** (1) The department of revenue shall report to
14 the 62nd legislature, as provided in 5-11-210, on the amount of tax credits allowed under [section 6].

15 (2) The department of natural resources and conservation shall report to the 62nd legislature, as
16 provided in 5-11-210, on the department's progress in implementing the provisions of [sections 1 through 5],
17 including any recommendations for improvements.

18
19 **NEW SECTION. Section 8. Codification instruction.** (1) [Sections 1 through 5] are intended to be
20 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 5].

21 (2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the
22 provisions of Title 15, chapter 30, part 1, apply to [section 6].

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24 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

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26 **NEW SECTION. Section 10. Applicability.** [Section 6] applies to tax years beginning after December
27 31, 2009.

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29 **NEW SECTION. Section 11. Termination.** [Section 6] terminates December 31, 2012.

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